

IN THE DISTRICT COURT OF CEDAR COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

CORY BUSS d/b/a
BERNER'S SERVICE,

Defendant.

Case No. CI 16-61

COMPLAINT

COMES NOW Jim Macy, Director of the Department of Environmental Quality, who institutes this action through Douglas J. Peterson, Attorney General, on behalf of the State of Nebraska as Plaintiff and alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ") is and was at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Reissue 2014), to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014), and all rules, regulations, orders, and permits issued pursuant to the Act.

2. Defendant, Cory Buss, d/b/a Berner's Service ("Berner's Service"), at all times material herein, is a sole proprietor of a gasoline service station in Cedar County, Nebraska. At all times material herein, the defendant owned and operated a gasoline service station at 211 East Highway 20, Randolph, Nebraska 68771.



FILED

NOV 18 2016

CLERK OF DISTRICT COURT
CEDAR COUNTY, NEBRASKA

JURISDICTION AND VENUE

3. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2008).

4. Venue is proper in Cedar County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2008).

FACTUAL ALLEGATIONS

5. In early April 2015, an employee at Defendant's facility located at 211 East Highway 20, Randolph, Nebraska, overfilled a tank wagon from a load-out rack connected to an underground storage tank system containing diesel fuel. Diesel fuel spilled into a storm water drain located about 35 feet east of the load-out rack at the facility.

6. From this storm drain, the fuel ran into the piping another 200 feet to the point where it drained into Middle Logan Creek, creating petroleum sheen on the creek.

7. Defendant did not notify NDEQ of a release of petroleum to the surface and to a waterway.

8. Additionally, Defendant did not take action to contain and clean up the release in an appropriate manner.

9. On July 2, 2015, NDEQ issued a Notice of Violation to Defendant for causing a diesel fuel spill at its location, failing to notify NDEQ of the spill, failing to clean up the spill, and allowing diesel fuel to enter the waters of the state.

FIRST CAUSE OF ACTION

10. Plaintiff hereby incorporates by reference paragraphs 1 through 9.

11. Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2014) is in effect at all times material herein and states that it shall be unlawful for any person to cause pollution of any waters of the

state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state.

12. Neb. Rev. Stat. § 81-1506(1)(b) (Reissue 2014) is in effect at all times material herein and states that it shall be unlawful for any person to discharge or emit any wastes into any waters of the state which reduce the quality of such waters below the water quality standards established by the Nebraska Environmental Quality Council (“NEQC”).

13. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2014), the NEQC adopted the *Nebraska Surface Water Quality Standards*, promulgated at Title 117 of the Nebraska Administrative Code, which is in effect at all times material herein.

14. Title 117 Neb. Admin. Code Ch. 4 § 005 states “[t]o be aesthetically acceptable, waters shall be free from human-induced pollution” which “produce objectionable films.”

15. In early April 2015, an employee of the Defendant overfilled a tank wagon from a load-out rack connected to an underground storage tank system containing diesel fuel at 211 East Highway 20, Randolph, Nebraska. Diesel fuel spilled into a storm water drain which drained into Middle Logan Creek, creating petroleum sheen on the creek and a discharge into the waters of the state, in violation of Neb. Rev. Stat. § 81-1506(1) (Reissue 2014) and 117 Neb. Admin. Code Ch. 4, § 005.

16. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Acts.

SECOND CAUSE OF ACTION

17. Plaintiff hereby incorporates by reference paragraphs 1 through 16.

18. Neb. Rev. Stat. § 81-1506(2) (Reissue 2014) is in effect at all times material herein and states that it shall be unlawful for any person to “discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System.”

19. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2014), the NEQC adopted *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*, promulgated at Title 119 of the Nebraska Administrative Code, which is in effect at all times material herein.

20. Title 119 Neb. Admin. Code Ch. 2 § 001 states “[n]o person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from [NDEQ] for such discharge.”

21. Defendant’s discharge of diesel fuel and failure to clean-up the discharge in a timely manner resulted in a discharge into the waters of the state without having first obtained a permit from NDEQ for such discharge in violation of Neb. Rev. Stat. § 81-1506(2)(a) and 119 Neb. Admin. Code Ch. 2, § 001.

22. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Acts.

THIRD CAUSE OF ACTION

23. Plaintiff hereby incorporates by reference paragraphs 1 through 22.

24. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2014), the NEQC adopted *Rules and Regulations Pertaining to Management of Waste*, promulgated at Title 126 of the Nebraska Administrative Code, which is in effect at all times material herein.

25. Title 126 Neb. Admin. Code Ch. 18 § 002 requires any responsible person to immediately notify NDEQ of any release or suspected release of an oil or hazardous substance. Notification is required regardless of the quantity of an oil or hazardous substance release if such release “impacts or threatens waters of the state.”

26. Title 126 Neb. Admin. Code Ch. 18 § 003 states that “[w]henver an oil or hazardous substance is released, it shall be the duty of the responsible person to take or cause to be taken, within 24 hours, all necessary steps to stop the release and contain all released material.” Further, “[a]s soon as the release has been stopped and contained, the responsible person shall take action to preclude continued or future release.” *Id.*

27. After learning of the diesel spill, Defendant failed to notify NDEQ of the spill in violation of 126 Neb. Admin. Code Ch. 18, § 002.

28. After learning of the diesel spill, Defendant failed to contain and clean up the diesel in an approved manner in violation of 126 Neb. Admin. Code Ch. 18, § 003.

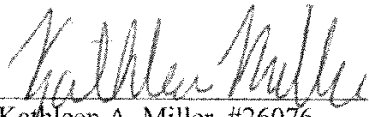
29. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Acts.

WHEREFORE the Plaintiff prays that judgment on its claims be entered herein against the Defendant in the form a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014) together with the costs of this action.

Dated this 16th day of November, 2016.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

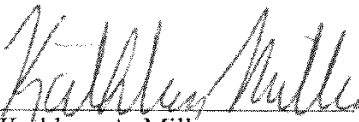
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kathleen.miller@nebraska.gov
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Kathleen A. Miller, hereby certify that a copy of the foregoing Complaint has been served upon the Defendant, by regular United States mail, first class postage prepaid on this 16th day of November, 2016 at the address provided below.

Cory Buss
Berner's Service
P.O. Box 666
Randolph, Nebraska 68771


Kathleen A. Miller
Assistant Attorney General